

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,
Plaintiff,
v.
JOHN PEARL SMITH, II,
Defendant.

Case No. 3:16-cr-00086-SLG-1

ORDER RE: MOTIONS TO PROHIBIT THE ACC FROM VIDEOTAPING DEFENSE TEAM VISITS AND FOR RELATED DISCOVERY.

Before the Court at Docket 241 is Defendant John Pearl Smith II's Motion to Prohibit the Anchorage Correctional Complex (ACC) From Videotaping Attorney/Defense Team Visits. The parties have filed additional briefing on the issue.¹ Also before the Court at Docket 265 is a related motion: Mr. Smith's Motion for Discovery Related to the ACC's Practice of Videotaping Visits. The parties have filed additional briefing on this issue as well.²

In his Motion for Discovery, Mr. Smith asks the Court to order the ACC and/or the Alaska Department of Corrections to provide materials such as videotapes, policies, agreements, and disclosures. Because these materials, if discoverable, are more properly the subject of a subpoena *duces tecum*, Mr. Smith's Motion for Discovery

¹ See Government's Opposition at Docket 246, Mr. Smith's Reply at Docket 247, Government's Supplemental Briefing at Docket 260, Declaration of AUSA Taylor at Docket 261, Mr. Smith's Response to Supplemental Briefing at Docket 266, and Government's Reply to Response to Supplemental Briefing at Docket 279, and Mr. Smith's Reply to Government's Position Re: Physical Presence at Feb. 6, 2019, hearing and Mr. Smith's Limited Waiver at Docket 283.

² See Government's Opposition at Docket 271 and Mr. Smith's Reply at Docket 278.

(Docket 265) is DENIED.³ Either party may seek the issuance of a subpoena from the Court on this topic; a proposed subpoena shall clearly delineate the precise material that the party is seeking and the entity from which it is seeking that material.⁴ Any motion for a subpoena related to this issue must be filed by **January 18, 2019**. Any opposition must be filed by **January 23, 2019**. No replies shall be filed unless specifically requested by the Court.

The Court will allow the parties to present evidence at an evidentiary hearing on the issues raised in Mr. Smith's Motion to Prohibit the ACC from Videotaping (Docket 241) and related filings. The evidentiary hearing will occur **February 6, 2019**, following the Status Conference at **1:30 p.m.**

On or before **January 30, 2019**, each party shall file with the Court a list of each witness it intends to call at that hearing, together with the expected length of that witness's testimony and the topic(s) that witness is expected to discuss. After the hearing, the Court will issue an order on the pending motion to prohibit videotaping (Docket 241).

The Court has reviewed Mr. Smith's limited waiver dated January 14, 2019, and filed with the Court that same day (Docket 283). The Court declines to accept the waiver without a hearing at which Mr. Smith is physically present with counsel. Therefore, the United States Marshalls shall ensure that Mr. Smith is physically present in the District Court in Anchorage, Alaska, at the February 6, 2019 hearing.

³ See generally Rule 17, Federal Rules of Criminal Procedure.

⁴ See generally *Bowman Dairy Co. v. United States*, 71 S.Ct. 675 (1951).

On application of Mr. Smith, the Court will address the scope of any waiver of physical presence at any future hearing at that time.

IT IS SO ORDERED.

DATED this 15th day of January, 2019, at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE